

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Presentation of the Portrait

of

CARL O. BUE, JR.

United States District Judge

United States Courthouse
Houston, Texas
August 28, 1987
11:00 A.M.

**Judges of the
Southern District of Texas**

JOHN V. SINGLETON, JR. Chief Judge	FILEMON B. VELA HAYDEN W. HEAD, JR.
CARL O. BUE, JR.	RICARDO H. HINOJOSA
ROSS N. STERLING	LYNN N. HUGHES
JAMES DEANDA	DAVID HITTNER
NORMAN W. BLACK	WOODROW SEALS
GEORGE P. KAZEN	Senior-Active
GABRIELLE K. McDONALD	JAMES L. NOEL
HUGH GIBSON	Senior-Inactive

Program Speakers

REVEREND PAUL OPSAHL
HONORABLE JOHN V. SINGLETON, JR.
HONORABLE JOHN R. BROWN
HONORABLE JOE INGRAHAM
PROFESSOR MICHAEL TIGAR
ATTORNEY JOE H. REYNOLDS
HONORABLE CARL O. BUE, JR.



HONORABLE CARL O. BUE, JR.

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(Portrait of Judge Carl O. Bue, Jr. unveiled in open court)

CHIEF JUDGE SINGLETON: That is a great portrait, Carl. I think it flatters you a little.

We will now have a view from academia by Professor Michael Tigar from the University of Texas Law School. Mike Tigar was and is an outstanding lawyer. He was a partner of Edward Bennett Williams and has tried lots of famous cases. Tried one here in this court before me as the presiding judge. And he is now a professor at the University of Texas Law School.

So, Mike, would you please say a few words about academia's perception of Judge Bue.

PROFESSOR TIGAR: Thank you.

Chief Brown, because to me you will always be the Chief, members of the Fifth Circuit, Chief Judge Singleton, Judge Bue, judges of the District Court, honored guests.

I am here under false pretenses. I am only lately an academic, having practiced law for nearly two decades before the University

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of Texas made an offer that proves they had more money than sense. But I am accepted grudgingly in both the academic and trial lawyer world. The professors, in their intellectual self-confidence, think I am a sinner who has repented, and therefore they welcome me. And my trial lawyer colleagues are a tolerant bunch and they regard me as a backslider whose fall from grace they can understand and even sympathize with.

I am honored to be asked to say a few words about Carl Bue, distinguished alumnus of the University of Texas Law School, and an inspiring teacher of admiralty law to our students.

I want to speak briefly today about faith of a particular kind, constitutional faith: yours, mine and Judge Bue's. I bring these observations to you from the perspective of someone who has read many of Judge Bue's nearly 300 published opinions, and has tried to verdict in his court an eight-week criminal tax case involving allegations that our client failed to report on his personal return approximately \$7 million.

When the Supreme Court first convened in 1790, there were no cases on its docket. The justices busied themselves by sitting on circuit and hearing trials, assisted by a corps of other federal judges appointed according to Article 3 of the Constitution.

The framers knew it would be difficult to live up to the solemn and implacable commands of Article 3 about judicial independence and the words of the supremacy clause. But they could not, I think, have dreamed of a world such as that in which Carl Bue has practiced, dwelt and judged.

District judges in the Southern District of Texas preside over dockets of well more than one thousand cases per judge. Yet, they are bound by the same oath their forerunners took, to make the constitution, laws and treaties supreme, and therefore to try and do justice in each of these cases. It is a measure of individual courage and integrity of every one of the judges of this district that this federal court enjoys its fine reputation. I say that having been involved in cases in more than 30 federal judicial districts, and having appeared in contested litigation not only before Judge Bue, but before Chief Judge Singleton and Judges Sterling, Seals, Black and DeAnda.

Of course, Court of Appeals and Supreme Court dockets are also clogged, but being a federal district judge with a professed faith in Article 3 poses special challenges that Judge Bue well appreciates and surmounts. The federal trial bench is the first line of defense of the supremacy clause.

In an appellate case, the facts have been packaged by the proceedings below, and perhaps tied up neatly in findings of fact

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under Rule 52. In the trial court, however, the facts are unruly and the district judge must identify them in hurling, changing, multi-hued patterns of testimonial and real evidence presented by adversaries.

Consider, for example, Judge Bue's decision in *Greater Houston Chapter of American Civil Liberties Union v. Eckels*, reported at 589 Federal Supplement 222. Commissioner Eckels had erected three crosses and a star of David in a county park. When a citizen group sued claiming that these were religious symbols and constituted an establishment of religion, the defendant commissioner claimed that these were, after all, secular symbols and that he planned to make this park the site of a war memorial. In the context of remembering those who fell in battle, these symbols were, the commissioner claimed, simply part of the planned memorial.

Judge Bue's opinion runs 40 pages in Federal Supplement. It reflects the careful and detailed notes that he and his clerks are accustomed to take in every case. Judge Bue threads his way through the evidence. What is there that supports, and what contradicts, the defendant's assertion of a secular purpose for these religious symbols? And if the claim of secular purpose is to be credited, how is it that it was not raised until quite late in the lawsuit in the face of earlier, contradictory statements?

Judge Bue measures out the testimony of experts on either side, carefully noting their qualifications, their conclusions, and most importantly, the concessions they were compelled to make in the face of cross-examination. Here was a constitutional issue, but the constitutional choices could not be made except by one who understands the importance of testing bland and tepid assertions in the crucible of cross-examination, and then assaying the resulting alloy of statement and contradiction.

Having measured out the facts, Judge Bue's opinion on the law begins with a disavowal of personal interest and a reaffirmation of what Article 3 commands. This case has nothing to do with Judge Bue's own deep religious conviction. It has rather to do with his duty to uphold the constitution. It is fair to say, and Supreme Court Judges have said it, that the law of the first amendment's establishment clause is a particularly hostile thicket. How much more do these brambles hold danger for a district judge who must thread his way to a result in a hotly-contested trial setting.

Judge Bue's opinion assesses the governing law, and characteristically tests his conclusions against all plausible theories of the case. He ends by reminding us of two important and related truths: First, that

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"contrary to the principle of majority rule" in Judge Bue's words, "the constitution safeguards the rights of the minorities—in this case the rights of those who are not Christians and Jews."

Second, and equally important, the Judiciary's power to enforce these countermajoritarian principles is not a lawless and unconfined discretion, but rather must be exercised in the clear light of a concrete dispute, and with careful attention to the rules of law that both command and constrain Article 3 judges.

I could cite dozens of other opinions that show these same characteristics in the fields of antitrust, abusive litigation, civil procedure, environmental law, jail conditions, pretrial publicity, and many others. But I want to take just a few minutes more to share with you a personal experience in trying a complex case in Judge Bue's court.

The indictment was in many counts—tax evasion, false statements, perjury. The defendant had unquestionably been engaged in a business that had generated millions of dollars in revenue. The root question was whether he had actually received the income the government claimed, or whether his partners had essentially bilked him of his share and then hoodwinked the prosecutors into letting them be star witnesses for the government. The trial and jury deliberations lasted for eight weeks. The courtroom was bedecked with filing cabinets full of the hundreds of documentary exhibits.

Pretrial motions consumed days of trial time as Judge Bue weighed and assessed the legal and factual claims. The laws of Bermuda, Canada and the Cayman Islands were briefed and argued. I will not pretend that Morton Susman, co-counsel, and I agreed with Judge Bue's every ruling. We surely did not. But we came to the trial itself knowing that our every contention had been the subject of careful and thoughtful examination.

Mort Susman and I were convinced as this trial began—and our conviction grew as the government's witnesses wove their tale for the jury—that the prosecutors seemed to be holding back evidence that might cast further doubt on what the jury was hearing. Every day we cross-examined vigorously and lengthily. Judge Bue listened patiently as we reviewed—renewed rather, often with additional case citations and brief memoranda, our claims for further discovery. Quite frankly, we at times became frustrated in this process, and I am sure Judge Bue did as well.

Then I recall one afternoon late in the government's case when Judge Bue sent the jury from the room and called us all forward. He looked at the Justice Department lawyer and delivered a crisp and authoritative opinion that showed us all just how carefully he

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had been weighing the bits of fact and doctrine that the parties had been presenting:

He began by telling us what judges ought to do. I quote from imperfect memory:

"I have been listening", he said, "for these past weeks and months to these defense requests. If I can put it this way, the trial judge is bound to give the government some deference in this process of discovery. He should, in prudence, stay his hand until, if you will, a bell sounds signalling that the weight of evidence shows that the government has been holding something back that the defendant has the right to see. That bell has sounded and I order the government to respond to the defense request for documents bearing upon the credibility of these witnesses by tomorrow morning."

"But, Your Honor", the prosecutor replied, "that would mean producing ten file boxes of paper."

Judge Bue replied that if the government had been holding back that much, he was more than ever convinced his ruling was right.

"But, Your Honor", the prosecutor objected, "most of these documents are in the custody of the prosecutors and IRS agents in New Orleans. They are not mine to turn over."

Judge Bue smiled. He reminded the prosecutor that when last he looked, there was only one federal government and he was confident that his writ ran at least from Houston to New Orleans. And then he looked back at his notes and patiently set out the method and timing of document production in compliance with his order.

I remember walking out of the courtroom that day elated. Not just because we had won a motion. Not just because we had renewed confidence that we could help the jury understand our position. I think it was for a deeper reason. Time and the tides of battle sap the advocate's fighting faith. As lawyers, we despair that the impassivity of judges before whom we argue have perhaps fallen prey to G.K. Chesterton's description of the English judges' malaise:

"They are not cruel", he said, "they just get used to things."

But here is an Article 3 judge who had been listening. He had been weighing, evaluating, considering. And now he was ruling in a measured way that recognized the most basic value of the adversary system: a contest based upon the production of all relevant evidence bearing upon the issue that the trier of fact must decide.

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John Milton said it best: "I cannot praise a fugitive and cloistered virtue, unexercised and unbreath'd, that never sallies forth, to see her adversary . . . Who ever knew truth to be put to the worst in a free and open encounter."

Maybe it is, in some measure, the spirit of the Texas frontier that makes Texas judges like Carl Bue such worthy keepers of the flame of justice. Whatever the reason, I am proud to join with all of you today in honoring Carl Bue.

CHIEF JUDGE SINGLETON: Thank you, Professor Tigar.